UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Docket #12m2634
UNITED STATES OF AMERICA,	:	1:12-mj-02634-UA
Plaintiff,	:	
- against -	:	
ERIC PROKOPI,	:	New York, New York October 22, 2012
Defendants.	:	
------------------------------------	:	

PROCEEDINGS BEFORE
THE HONORABLE HENRY PITMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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Witness	Direct	Cross	Re-Direct	Re-Cross
None				

E X H I B I T S

Exhibit Number	Description	ID	In	Voir Dire
None				

THE CLERK: United States against Eric Prokopi. Counsel, please state your name for the record.

MR. MARTIN BELL: Martin Bell for the Government. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. GEORGES LEDERMAN: George Lederman, that’s L-E-D-E-R-M-A-N, for Mr. Eric Prokopi. Good afternoon, Your Honor.

THE COURT: Okay, good afternoon. Mr. Prokopi, my name is Magistrate Judge Pitman. The purpose of this proceeding is to inform you of certain rights that you have, to inform you of the charges against you, excuse me, to consider whether counsel should be appointed for you, and to decide under what conditions, if any, you should be released.

Was the defendant arrested, or did he surrender here today?

MR. BELL: He surrendered here this morning, Your Honor, after originally being arrested last week in Gainesville, Florida. He was presented there last Wednesday, the 17th, pursuant to Rule 5(c)(3).

THE COURT: And when did he surrender today?

MR. BELL: At approximately 11 o’clock, maybe a little earlier.

MR. LEDERMAN: Actually, it was about 10:30, Your

Honor.

THE COURT: All right, thank you. Mr. Prokopi, you have the right to remain silent. You're not required to make any statements. Even if you have made statements to the authorities, you need not make any further statements. Anything you do say can be used against you.

You have the right to be released either conditionally or unconditionally pending trial unless I find that there are no conditions or combination of conditions that would reasonably assure your presence in court and the safety of the community.

You have the right to be represented by counsel during all court proceedings, including this one, and during all questioning by the authorities. If you could not afford an attorney, I will appoint one to represent you. It's my understanding that you're currently represented by retained counsel, but the right to the appointment of counsel is an ongoing right you possess throughout these proceedings. If at any time you're unable to continue with retained counsel because you run out of money, you can apply to the court at any time for the appointment of counsel. Do you understand that?

MR. ERIC PROKOPI: Yes.

THE COURT: Mr. Prokopi, you're charged in a complaint in three counts. Count 1 charges you with violating Title 18 U.S.C. § 371. That statute makes it a crime to conspire or to agree with others to violate the laws of the United States. In count 1 you're charged with conspiring to commit the offenses of smuggling, sale or receipt of stolen property, and the making of false statements to a federal official.

In count 2 you're charged with violating Title 18 U.S.C. § 545. That statute, in plain language that statute makes it a crime to smuggle goods into the United States. And in court 3 you're charged with violating Title 18 U.S.C. § 2315 which prohibits the sale or receipt of stolen goods which have been transported in interstate or foreign commerce.

In general terms, the charges against you arise out of your alleged participation in the importation, receipt, and attempts to sell fossilized dinosaur bones. Mr. Prokopi, have you received a copy of the complaint?

MR. PROKOPI: Yes.

THE COURT: I'm sorry, this should have been directed to Mr. Lederman, excuse me. Mr. Lederman, have you received a copy of the complaint?

MR. LEDERMAN: Yes, I have, Your Honor.

THE COURT: And have you reviewed it with your client?

MR. LEDERMAN: I have, Your Honor.

THE COURT: And do you waive its reading?

MR. LEDERMAN: Yes, we do.

THE COURT: Thank you. Mr. Prokopi, you have the right to a preliminary hearing at which the Government will have the burden of establishing that there's probable cause to believe that the crimes charged in the complaint have been committed and you're the person who committed them. If probable cause is not established, you'll be released from the charges. If probable cause is established, the Government will then have the right to proceed to trial against you.

If you're in custody, you have the right to a preliminary hearing within 14 days. If you're not in custody, you have the right to a preliminary hearing within 21 days. However – within 20 days, excuse me. However, no preliminary hearing will be held if either the grand jury indicts you or if the Government files an accusatory instrument called an information prior to the date set for the preliminary hearing. I'll set the preliminary hearing date after I determine bail. I'll hear from the Government first, then I'll hear from defense counsel. Mr. Bell.

MR. BELL: Yes, Your Honor. Having spoken to Mr. Lederman, I think it's safe to say that the parties disagree some on bail, and so I'll make an argument concerning Mr. Prokopi's risk of flight.

It may be worth setting the stage some though. Mr. Prokopi’s currently on bail after last week’s presentment on conditions that included a surety bond in the amount of $100,000 listing his Florida property, his Gainesville property as security, and then a number of conditions that are fairly standard, but the most noteworthy among these is that, as least so far as I was aware, no one other than his wife, Miss Amanda Prokopi, had to sign the bond.

The Government requests that going forward these conditions be somewhat stricter. Specifically, the Government asks that Mr. Prokopi’s release be continued as a $600,000 bond, again, secured by Mr. Prokopi’s property and cosigned by two financially responsible persons other than his wife. And I’ll get into why.

You’ve read the complaint at this point. I know that this is somewhat of an unusual case involving an unusual illegal market in dinosaurs. The major – the initial concern that the Government has is evidence that it’s uncovered even since the execution of the warrant based on that complaint that show that this market and Mr. Prokopi’s participating in it is still something very much active and affects his ability to access finances that could deepen his – that make him more of a flight risk.

On the very day of his arrest last Wednesday, as officials had taken him into custody and were in the process of searching his Gainesville residence, a delivery truck rolled up to Mr. Prokopi’s home, containing a package, a six-foot crate, 400 pounds in weight, addressed to him at that home address. That, as we learned after obtaining another search warrant, contained yet another dinosaur, an oviraptor that we believe is a dinosaur, whose genus and species name are Oviraptor mongoliensis. Having read the complaint, Your Honor can probably see where we’re going. This is another Mongolian dinosaur, one that we believe had been the subject of continued negotiations between Mr. Prokopi and the gallery in California.

The market price of such a dinosaur, so far as we’re able to establish from the emails, would be north of $75,000 to $100,000. And the glaring thing here is, given the recency of that conduct the sheer quantity of dinosaurs that Mr. Prokopi has dealt with, dealt in, as alleged in the complaint --

THE COURT: Do we know whether the dinosaur that was delivered, or the fossils that were delivered last week are stolen?

MR. BELL: We don’t know for certain, but we can infer, based on several things, that they are, which is to say we’ve done research on the Oviraptor mongoliensis. It’s only been found in Mongolia, which is something that distinguishes a number of dinosaur fossils at the heart of this case.

We know from the Mongolian government, as alleged in the complaint, a number of things, that all dinosaur fossils found within Mongolia are under Mongolian law state property, which is to say that they can't be removed from the country.

THE COURT: Does the Mongolian government ever sell them?

MR. BELL: It's possible that the Mongolian government sells them, but that seems to be rare, largely because I think Mongolia depends in large – Mongolia, from a tourism standpoint, I think depends on some degree of fossil tourism. What they have told us is that they have never made dinosaurs available legally to Mr. Prokopi or the other individuals --

THE COURT: What is the – the fossil tourism you described is what exactly?

MR. BELL: That is --

THE COURT: It's not people going there to dig them up.

MR. BELL: No, no, no, it is a matter of people being able to go in and see fossils, either fossils that have been dug up or fossils that still exist in like a partially excavated state.

THE COURT: Okay.

MR. BELL: So there's that in the first instance. During the search of Mr. Prokopi's home, we found a note that I'll pass up to Your Honor and I'll supply Mr. Lederman with a copy as well.

(pause in proceeding)

THE COURT: Thank you.

MR. BELL: This is a handwritten note from Mr. Prokopi to an individual named Chris, an individual who we understand to be a British citizen named Christopher Moore with whom Mr. Prokopi does a decent amount of his fossil business. You can read the note, but just by way of summary --

THE COURT: I'll tell you what, give me a second and I'll read it, okay?

MR. BELL: Sure.

(pause in proceeding)

THE COURT: All right, go ahead.

MR. BELL: So a couple of highlights here, Your Honor. One, at best, this note represents a clear example of coconspirators attempting to get their stories straight. At worst, it represents obstruction of justice. But what's alarming with respect to the bail issues that we have here is that they talk about a tarbo, I forget where the tarbo is referenced, but, as Your Honor knows from reading the complaint, tarbo most likely refers to tarbosaurus. And our information, from having Mr. Prokopi’s emails, is that there was a second tarbosaurus out there that Mr. Prokopi was attempting to unload. If he was successful in doing so, the sale of that dinosaur could result in hundreds of thousands of dollars in profit.

The smaller tarbosaur, the one that was sold through Heritage Auction, pending the outcome of proceedings with the Mongolians trying to get their dinosaur back, sold for a million dollars. If you’ve got a larger dinosaur, albeit one that exists within the black market, we just don’t know what additional resources Mr. Prokopi may have acquired recently or may be able to obtain through the sale of this or other dinosaurs.

I mean, again, Your Honor, it’s striking that the very day we show up with an arrest warrant, which could have been picked at random, there was another dinosaur potentially worth six figures being dropped off to his house.

Beyond that, Your Honor, I would also --

THE COURT: I’m still not sure – I appreciate what that – I think I appreciate what that means with respect to the strength of the case against him and what this note may mean with respect to the strength of the case against him, but can you explain to me how this aggravates the risk of flight or how this suggests there's a risk of non-appearance?

MR. BELL: Well --

THE COURT: I would think that, I mean maybe you know, I'm sure you know more about it than I do, but I mean are, is there an underground market in dinosaur fossils? I thought these were sold at auction in public sales.

MR. BELL: Your Honor, I suggest two things on the underground nature of the market. Number one, I'd suggest that there is a black market in dinosaur fossils and that that's most evident from the complaint where Mr. Prokopi's acknowledges that in his email to the individual at Heritage Auction. But, number two, to the extent that historically there hasn't been terribly much enforcement of these sales, a lot of illegal activity has been able to happen in plain sight.

At the point at which I walk into an auction setting and I'm several hands removed away from the individuals who may have excavated this creature from its native habitat, unless you're dealing with paleontologists who make enough of a stink of this to go to law enforcement, there's a very real possibility that in what essentially is a black market could hide in plain sight.

There haven't been very many federal cases or cases at all in which people have been prosecuted for this sort of misconduct. That's emboldening. It's sufficiently emboldening that these sorts of sales could happen --

THE COURT: Well, I'm not sure there's exactly a crime wave. I'm not sure how emboldening it's been. I'm not sure you would characterize – maybe you would. I mean is there a veritable crime wave of elicit dinosaur bone sales --

MR. BELL: Relative to the amount of --

THE COURT: -- threatening our republic?

MR. BELL: Crime wave is a sort of funny term, Your Honor, but I would suggest that the amount of sales that take place, given what we've learned over the course of this investigation, far exceeds the level of enforcement that's existed to this time. What I would also --

THE COURT: I'm still trying to – I'm still having a problem of tying this though to the risk of non-appearance.

MR. BELL: Sure. Perhaps --

THE COURT: Especially in light of the fact that Mr. Prokopi voluntarily surrendered today.

MR. BELL: Sure. What I would suggest, Your Honor, is that it ties in – maybe the best to under – maybe the best way to cast this is that it ties into a number of traditional factors of non-appearance.

Mr. Prokopi clearly has ties overseas, and I think it says something about the concerns about those ties, that among those ties is Christopher Moore, somebody who appears to be a coconspirator. Beyond that, it emphasizes the fact that Mr. Prokopi, for what financial difficulties he may have in some sense, he’s a person who’s sitting on top of, by his own estimation and his own estimates to Pre-Trial, about half a million dollars’ worth of dinosaur fossils. I don’t know how many of those are illegal, and I don’t know how many of those are the subject of possible sales. But to the extent that we tend to look at an individual’s financial means as a basis for risk of flight, that’s a concern.

More to the point, the present conditions are insufficient if only because the only person who’s had to cosign the bail is, A, his wife and, B, his business partner.

THE COURT: Well, yeah, but I mean he also has his criminal record, I’m not even sure this is a criminal record. He’s got two traffic citations and he’s married for 11 years. Seems to have a stable residence, two young children. I mean those are ties to the community also. To his relevant community, his community in Florida.

MR. BELL: I mean they – I’d say two things. One, with respect to ties to community, I think they’re ties to community that exist entirely within his home. I mean he’s lived there for, he’s lived in Gainesville for quite a while, but there’s nobody else on the hook for whatever bond exists should he and his wife both leave. And to the extent that his wife co-owns a business that the complaint alleges is pervaded with fraud, there’s a risk of liability on her part as well.

What I would also suggest is that although Mr. Prokopi doesn’t have much of a criminal history --

THE COURT: I don’t know, why do you say pervaded with fraud? I thought the complaint talks about less than half a dozen skeletons, doesn’t it?

MR. BELL: The complaint talks about less than half a dozen skeletons, although I would suggest that with respect to cash flow, if you’ve got a million dollar dinosaur here and a $200,000 dinosaur there, it doesn’t take terribly much. And there are ––

THE COURT: I mean --

MR. BELL: I would further represent, Your Honor --

THE COURT: It may depend on what the profit margin is, but – you know, pervaded with fraud, it’s fairly strong language. I’m not sure – I’m not sure there’s something here that shows that the business is pervaded with fraud.

MR. BELL: Your Honor, Special Agent Brasier, who, unfortunately, couldn't be here today, undertook a review of Mr. Prokopi's emails. The emails were primarily business related. Almost exclusive business related. And of the dinosaur species that were discussed there, and numerous of them, numerous dinosaurs were discussed, the majority of the dinosaur skeletons discussed were of Mongolian or likely of Mongolian origin, which, given the facts we have, would make them per se illegal. The overwhelming majority of the fossils discussed were dinosaur fossils, and among those dinosaur fossils, the overwhelming majority of them discussed were Mongolian dinosaur fossils.

I mean to the extent that everything earth may also sell, you know, some natural looking costume jewelry here and there, I don't think that disturbs what I think is a reasonable inference that there's something very troubling about the business.

Beyond that, Your Honor, I would note that although Mr. Prokopi doesn't have much of a criminal history as traditionally measured, he does --

THE COURT: I don't know if the traffic violations are criminal offenses. I don't know if he has any criminal history.

MR. BELL: Correct. What he does, however, have a dinosaur site raiding history. I'm going to hand up another, whatever, and hand this to Mr. Lederman as well.

This is a letter from February of 1993 from the then president of the Florida Paleontological Society, a Dr. David Webb. And you can take a moment to read the letter yourself, and perhaps it’s best if I let you do that.

THE COURT: Yeah, just give me one second to read this.

MR. BELL: Sure.

(pause in proceeding)

THE COURT: All right, well, the opening paragraphs reads, well, it’s a letter – well, let me back up. It’s a letter from a Dr. S. David Webb, Curator of Fossil Vertebrates at the Florida Museum of Natural History, addressed to Mr. Prokopi, and the opening paragraph reads, “I’m deeply dismayed to learn that you recently raided the museums active fossil operation in the Haley Quarries east of Newberry. Surely you must know that this is altogether unethical behavior with respect to the museum’s professional staff, with respect to the landowner’s rights, and with respect to all of the legitimate amateur paleontologists in the Florida Paleontological Society.”

Do we know what conduct this is describing, Mr. Bell?

MR. BELL: We do, Your Honor. I’ve spoken to Dr. Webb who’s since retired. I think he runs a bed and breakfast in Montana now. I’ve also spoken to two professors who are currently with the Florida Museum of

Natural History, and they've informed me that in 1993 and, again, over at some point in the past, seven years, Mr. Prokopi was cited by the Society for raiding private fossil excavations after hours that the Paleontological Society had been using.

At one point he was ordered or at least it was requested by the Society that he turn over some several hundred pieces of fossils that he had taken. One of the doctors I spoke to, Dr. Richard --

THE COURT: When you say raiding, was he – what exactly was he doing? Was he going onto private property without permission and pilfering through an excavation?

MR. BELL: Yes, Your Honor, this is private property, in that instance, private property at a quarry that the owner of the quarry had allowed the Florida Paleontological Society to use for its digs, given that it seemed to be fertile ground for fossil excavation. And Mr. Prokopi went there on his own without permission and extracted items. This happened in 1993, this happened again in I believe it was 2005 or 2006, at least as told to me by Dr. Holberg earlier today.

The unfortunate temptation is to suggest something about what could be at the cause of this, but at the very least there has been a lawless quality to Mr. Prokopi's --

THE COURT: Did the owner of the quarry file a complaint?

MR. BELL: No, Your Honor, at least that’s my understanding from Dr. Holberg. I think that there was a point at which items were returned, and the owner was satisfied.

THE COURT: Well --

MR. BELL: And, again, I recognize, Your Honor, that those --

THE COURT: If there’s any violation of rights though, based on what you’re describing, if anyone’s rights are violated, I guess it’s the owner of the quarry. I mean does the – well, did the Florida Museum of Natural History have rights in the fossils still in the ground on someone else’s property?

MR. BELL: Your Honor, with respect to one of the digs, there was – the dig was run I believe it was a Dr. Robert Chandler. I haven’t gotten the chance to speak to Dr. Chandler yet. He was a post-doctoral student at the University of Florida at the time. He’s now a professor somewhere else in Georgia. I don’t know what his actual, what the legal status of his property interest in the things in the ground would have been, but at the very least whether that property belongs to, that property interest belongs to Dr. Chandler or whether it belongs to the owners of the Haley Quarry, east of Newberry, Florida, the individual it didn’t belong to is Mr. Prokopi.

What we have here is a sustained conduct, foreign, domestic, you know, international dealings or small time looting in dinosaurs. And the concern given that the pervasive nature of the conduct is that --

THE COURT: You say sustained conduct, I mean you cite something, you cite an event 18 years ago, and the complaint talks about events in 2010 and 2012.

MR. BELL: I’ve also referenced another event within the 2005 to 2007 range. It’s not constant, Your Honor, but with respect to the pervasive characterization, it’s a lot more frequently than other people steal dinosaurs.

THE COURT: I’m not rising to the bait. Go ahead.

MR. BELL: Beyond that, Your Honor, I would suggest that between what appears to be active obstruction, between what appears within the current conditions to be a woeful lack of someone who’d be on the hook if Mr. Prokopi and his wife were to leave the country. Beyond Mr. Prokopi and his wife, and between what could be a fair amount of money well beyond the half a million dollars in dinosaur fossils that Mr. Prokopi actively acknowledges having in his possession, that bail conditions ought to be significantly stiffened.

MR. LEDERMAN: Thank you, Your Honor, I'm going to try to limit my remarks to the issue of risk of flight because I would suggest that much of what the Government has stated here this afternoon, nothing other than muddy waters as to this very point.

I spoke with Mr. Bell last week, at which point he had informed me that he would be making this type of request before this Court today which might serve to increase my client's bail, might even result in his detention. Notwithstanding that, my client is here this afternoon. And I would suggest to this Court that there is no single better indicia of lack of a risk of flight than my client's appearance in court this afternoon.

I too am going to ask this Court to modify bail but in a different direction. My client is currently on home detention, obviously travel restrictions in the district of Florida, in the northern. I'm going to ask this Court to remove the restriction of home detention so that he would be able to go out and earn a living and support his wife and two children, ages three and four.

The only assets that my client has, notwithstanding the fact that he's retained counsel, consists of the equity in his home, one-half of which already secures the bond that was issued in Florida, as well as the money invested and the work invested in the

Tyrannosaurus which is sitting in a warehouse in Long Island City.

The Government suggests that, even assuming that they are right, which we do not concede, that my client has all these fossils out there, the notion that anybody would buy a single fossil from him at this point in time is absurd. My client is radioactive when it comes to the issue of being able to earn a living in his business which I'll explain in a minute is legitimate.

The Government has repeated not once but twice the unfortunate coincidence that, during the execution of the search warrant, this enormous box appeared at his home. And in it, as the Government has explained, there were about 400 pounds of fossilized remains. Not only is the Government unable to declare to this Court whether those items were stolen, they cannot even demonstrate that they were his, and they unable to because they were not his. These were not fossils which he owned. These were fossils that were not consigned to someone else to sell with a purchaser in mind. These were fossils owned by someone else, another dealer, which in turn had returned to him for him to restore, which Your Honor is his major source of business. This is what my client does. He restores fossilized remains.

So the notion that he has out there these vast resources of fossilized remains to sell is just not true.

The assets, as I said, are the two ones he has, and that is the extent of it. The Government here for the first time has presented a letter handwritten by my client which the Government suggests is obstruction. The second sentence says to this alleged coconspirator, I'm not asking you to lie. Beyond that the Government says, well, the subject matter in here refers to a fossilized remain that my client could have easy access to. In fact, that's not in the United States. It's abroad.

And the notion that my client has ties abroad is equally untrue. He has no ties other than to where he resides in Florida with his wife, his two children, his mother and father live there, his whole life is there.

I'm not sure Your Honor's aware but there is a parallel forfeiture action that is pending before Judge Castel.

THE COURT: I've heard about it in the popular press. That's all I know about it.

MR. LEDERMAN: Yes. And, again, if I can just speak to the issue of the press, again, the fact that this case has garnered sufficient amount of press would further indicate that my client is completely unable at this time to sell any fossilized remains, stolen or not, to anyone out there knowing the Government is, you know, has him in their sights.

As to this action pending before Judge Castel, there has been enough skepticism about the validity of that case that I think it bears mention, to the extent that the Government suggests that in this case it somehow ties to the risk of flight. Your Honor, I suggest to you that the Government is going to be unable to prove that the fossilized remains came from Mongolia. We are speaking about a time when creatures roamed the earth without any concept of nation, of nation states, of borders. Mongolia has made the incredible leap that whatever is shipped from there must be stolen, ipso facto. That is a hurdle the Government will need proof.

And, in fact, as Your Honor alluded to earlier, the government is involved in the sale of those fossils as well. The dinosaurs tours, one can go into places there and buy them.

The Government, for the first time, has presented us with a letter 18 years ago, which, again, it somehow tries to link to the notion of a risk of flight, but suffice it to say that His Honor has pointed out the fact there was no complaint from the owner of the land, and that is because the owner of the land gave my client permission. And as a matter of fact, my client is the one who discovered the actual site where much of the excavation occurred. I think this is uncorroborated information here from an entity that really doesn’t have any impact on whether or not my client is a flight risk.

I would ask that the conditions of bail remain the same. I just would like to address this number here in the asset liability of 500,000. Well, again, Your Honor, only a certain amount of that refers to the actual fossilized remains; the other is the business itself – the goodwill, the customer list, the network that my client has. All of that information is somewhat speculative in terms of the net worth, but in terms of, even if every single one referred to a fossilized remain, my client, certainly now, has no access and no ability to sell them on any market.

As my client is here this afternoon, I would ask that my client’s bail conditions be continued, that he be removed from home detention so that he can find some job to earn a living, and that routine supervision be imposed. Thank you.

THE COURT: Let me just ask one other question --

MR. LEDERMAN: Yes, Your Honor.

THE COURT: Is there anyone else who could cosign for him in Florida?

MR. LEDERMAN: I believe his mother and father might be able to, Your Honor. Yes. Yes.

THE COURT: All right.

MR. BELL: May I be heard, Your Honor?

THE COURT: Go ahead, yeah.

MR. BELL: Mr. Lederman made some arguments as to the strength of the Government's case which, of course, always weighs on bail to some degree, particularly concerning whether we'd be able to establish that these dinosaurs are Mongolian in the first instance. As --

THE COURT: Well, let me just get – although it's a fascinating discussion, let me get back to the risk of non-appearance. I mean I'm looking at the Pre-Trial Services report which indicates he's got about $1,700 in cash, $1,500 in a checking account, $200 in cash. There's now a lien on his residence to secure the bail bond, the residence is not marketable. I mean is there really a risk he's going to flee the country with, you know, let's assume he's able to sell his car for $10,000, you know, he's got $12,000.

MR. BELL: Your Honor, if he were able to on top of that sell a tarbosaurus for $800,000, he would then have $811,000.

THE COURT: Well --

MR. BELL: I mean the issue is that --

THE COURT: -- given the charges against him, do you think that's gonna happen?

MR. BELL: I'm sorry? Well, Your Honor, I'd be surprised in the abstract, and yet, and yet the attention that Mongolia has given to this matter dates back to April. The attention that Mr. Prokopi has received from United States Attorney’s Office dates back to June, June of this year. And over the ensuring months, we’ve had active dinosaur dealings as well, and I would submit that the reason for that is because Mr. Prokopi really wants and needs money, perhaps now more than ever, because his tyrannosaur sale fell through, and he hasn’t gotten the million dollars through the Heritage Auction yet.

The note, and, again, this is a note that was found at Mr. Prokopi’s residence, not back in May, last week indicates that he’s trying to get this tarbo moved to Denver so that it can be sold. If you’re talking about the possibility of that happening, then there’s got to be some possibility that Mr. Prokopi, despite the attention that’s currently being lavished upon him and perhaps with the assistance of intermediaries, could wind up with a six figure dinosaur being sold or multiple six figure dinosaurs being sold.

We don’t have much of a way of knowing at this point, and I would submit that the real reason we don’t is because of the exact characterization that Mr. Prokopi gave us when talking to the Heritage Auction is his emails because he’s a participant in a black market. But we do know that the black market exists, we know that he’s trying to move a tarbosaur. We know that he’s received, you know, an oviraptor within the past week when law enforcement just happened to be there. These are real concerns.

And I think that to consider the entirety of Mr. Prokopi’s financial means as just, you know, whatever, $11,000, $15,000 shows up in the balance sheet, ignoring both the $500,000 worth of fossils that he actually acknowledges --

THE COURT: Well, I mean your adversary tells me that’s the entire value of the business, including goodwill. Does the business sell anything besides fossils?

MR. BELL: Your Honor, my understanding, having gone to the business’ website, is that they also sell certain exotic but relatively low value items, jewelry, the occasional statue from Africa or Asia, that sort of thing. If you’re looking at this from a balance sheet standpoint, the overwhelming majority of it would seem to be dinosaur fossils. And I would submit that when you factor in --

THE COURT: Did dinosaur fossils come from anyplace other than Mongolia?

MR. BELL: Do they ever?

THE COURT: I mean is there a legal source for dinosaur fossils?

MR. BELL: Oh, yes, Your Honor. To be clear, the Government isn’t suggesting that the sale of dinosaur fossils is per se illegal. But Mongolia, given the contours of the facts that we represent in the complaint, should automatically raise alarm bells. And as to Mr. Lederman's claim that we can't establish that because a dinosaur could have wandered off into some other part of Pangaea millions of years ago, the problem with this is that there are certain fossils that are only preserved, if they're within certain soil that's only been found within the Nemegt Basin of Mongolia. So even that dinosaur had wandered off, the fossil would not have been preserved for Mr. Prokopi to possess and subsequently try to sell.

The entire weight of science, as represented within the complaint, is such --

THE COURT: I mean I think the legal authorities you cite in the complaint go back to the 1920's though. Were there not archeological expeditions to Mongolia before the 1920's?

MR. BELL: Your Honor, I believe that the history of the dinosaur itself that we also cite within the complaint suggests that the dinosaur wasn't that – tyrannosaurus bataar wasn't discovered until Mongolia began implementing these laws. That is to say, Mongolia begins to implement these national property laws in 1924. The dinosaur, this particular dinosaur, certainly the one most at the heart of this action, the tyrannosaurus bataar isn't discovered until about 1948.

MR. LEDERMAN: Your Honor, if I may just very briefly.

THE COURT: Yeah, go ahead.

MR. LEDERMAN: I just do want to address one specific point because it smells back, the idea of a black market, because it really gives a shroud over everything. The Government's complaint doesn't speak to black market. It speaks to misdeclaration. So my client is not involved in a black market. There is an issue on the declaration of importing these remains, not on the black market, but through customs as to what is country of origin.

Now, there may be some and there will be certainly some very difference of opinion as to what that means, but that's not black market. And whether or not it is, again, Your Honor, that is irrelevant as to the issue of flight.

MR. BELL: Your Honor, I'm reading from paragraph 24(f) of the complaint right now. This is Mr. Prokopi's email --

THE COURT: What page are you on?

MR. BELL: This is on page 16.

THE COURT: One second. Go ahead.

MR. BELL: And this is after the action is commenced. I'm reading about halfway through that block quote. Mr. Prokopi's writes the following: "If the

Mongolian president is, indeed, only interested in getting to the bottom of the sources and wants to look good for his people, I think I can help him do that if he’s willing to cooperate and compromise. If he only wants to take the skeleton and try to put an end to the black market, he will have a fight and will only drive the black market deeper underground. To the extent that there are misrepresentations made on customs forms, that is only one mechanism through which this black market functions.”

MR. LEDERMAN: Your Honor --

THE COURT: Go ahead.

MR. LEDERMAN: If Mr. Bell had read the first sentence, that might have assisted the Court in giving a full understanding. “Although I am sure that everything with the specimen is legal,” is legal, “as far back as I can tell,” etc. What my client knows obviously is that what he’s trying to do is legal and that he’s willing to assist with the governments aborad in any black market there. This paragraph in no way suggests --

THE COURT: Yeah.

MR. LEDERMAN: -- that it is inculpatory as to my client. In fact, it’s exculpatory because it indicates he has an awareness of it, he’s willing to help them even though he knows that what he has done, or understands and believes what he has done, is illegal.

(pause)

MR. BELL: Oh, Your Honor, may I be heard as to one point --

THE COURT: Go ahead.

MR. BELL: -- that Mr. – Mr. Lederman mentioned the possibility of being taken off of home confinement in order for his business to continue. I haven't at this point quite figured out exactly what part of Mr. Prokopi’s business makes it necessary that he actually leave his home. He has a very --

THE COURT: Well, that puts the burden though on the wrong side. I mean the Bail Reform Act says that the court is supposed to set the least restrictive conditions possible, and it’s – the issue is not whether there’s a need to remove the condition of home confinement; the question is is there a need for home confinement.

MR. BELL: And I would submit, Your Honor, that with the cash – with the value of the bond being what it is right now, there is. Because, again, if Mr. Prokopi could have a million dollar tyrannosaurus sold and have the windfall from that fall into his lap, a bond that has only been cosigned by his business partner and wife --

THE COURT: Where is this second tyrannosaurus?

MR. BELL: The second tyrannosaurus, Your Honor, isn’t within, to be clear, it’s not within the complaint.

It’s been evidenced by our review of the emails, and we believe the tyrannosaurus, the tarbo referenced in the notes to Chris Moore that I handed up.

THE COURT: Do we know if this second skel – the second tyrannosaurus exists? I mean do we know where it is or if it’s in the country?

MR. BELL: We believe it exists. We believe that it’s still in the country.

THE COURT: Anything else you want to tell me, Mr. Bell?

MR. BELL: Not unless you have any questions, Your Honor.

THE COURT: No. All right, Mr. Lederman, anything else you want to tell me?

MR. LEDERMAN: No, Your Honor. Thank you.

THE COURT: All right. The overarching issue here with respect to bail is the risk of non-appearance. There’s no issue here with respect to dangerousness to the community. And with respect to bail, we are confronted or we’re face – we have the following hard facts. The defendant is 38 years of age, he’s lived in Florida his entire life. His parents live in Florida, his half-brother – does the half-brother live in Florida, Mr. Lederman?

MR. PROKOPI: Yes.

MR. LEDERMAN: Yes, Your Honor.

THE COURT: Okay. His half-brother lives in Florida. He's been married for 11 years. He has two minor children. His liquid assets appear to be fairly modest. He has no criminal record. And the case has given rise to a fair level of notoriety. I know that at least the civil action before Judge Castel has appeared in the popular press, and I suppose to individuals who are knowledgeable about the market in dinosaur fossils are probably aware of Mr. Prokopi's involvement in the chain of title of the fossils that are at issue in the case before Judge Castel.

I think there's substance, there's some substance to both sides' arguments here. I think there's substance to Mr. Lederman's argument that Mr. Prokopi's effectively radioactive at this point and that no legitimate collector of dinosaur fossils would have an interest in dealing with him. And I'm not sure that there's a reasonable prospect that he's got a dinosaur fossil that he's going to be able to convert to vast sums of money.

At the same time I also think there's some traction in Mr. Bell's argument that the only cosigner on the bond right now is Mr. Prokopi's wife.

This is what I'm going to do with respect to bail. I'm going to continue the bail conditions that were set in Florida with the following amendments. The amount – Mr. Lederman, is his half-brother willing to cosign?

MR. LEDERMAN: Your Honor, there may be an issue as to whether or not he’s financially responsible.

THE COURT: Well, it sounds like he’s in a position to exercise moral suasion though.

MR. LEDERMAN: That may be true.

THE COURT: Well, let me ask you this, is there anyone --

MR. LEDERMAN: Again, his mother and father --

THE COURT: Yeah, the mother – mother and father are 74 and 82, respectively. Is there anyone else who could cosign for him?

MR. LEDERMAN: Possibly his wife’s parents.

THE COURT: This is what I’m going to do. I’m going to continue the bail conditions with the following amendments. I’m going to raise the amount of the bond to $250,000 and require that it be cosigned by one financially responsible person or person in a position of moral suasion.

I’m also going to vacate the condition of home detention. It’s with electronic monitoring, Mr. Lederman?

MR. LEDERMAN: I don’t believe so, Your Honor.

THE COURT: Okay, it’s just home detention without electronic --

MR. LEDERMAN: As of now, yes.

MR. BELL: There was – my understanding from the Gainesville AUSA is that there was electronic monitoring but that that electronic --

THE COURT: By random calls.

MR. BELL: -- was by phone --

THE COURT: Right, not a bracelet.

MR. LEDERMAN: Right.

MR. BELL: And not a bracelet, that Mr. Prokopi didn’t have a landline, so it was done using his cell phone, such that they, for all practical purposes, couldn't actually keep track of where he was.

THE COURT: All right. One other hard fact, which I omitted in the recitation of hard facts, is the fact that Mr. Prokopi also voluntarily surrendered today, and that is a fact that it would be inappropriate to overlook.

MR. BELL: To clarify, Your Honor --

THE COURT: Well, let me just finish, okay?

MR. BELL: Sure.

THE COURT: So the amount of the bond is up to $250,000 to be cosigned by one financially responsible person or person in position to exercise moral suasion. I’m vacating the condition of home detention. Does his wife have a passport, Mr. Lederman?

MR. LEDERMAN: Yes, Your Honor, she does.

THE COURT: Is there any objection to her surrendering her passport?

MR. LEDERMAN: Yes, Your Honor, we have no objection.

THE COURT: I’m also going to direct that the wife’s passport be surrendered. All right, in all other respects, the bail terms set in Florida will remain in force. What did you want to say, Mr. Bell?

MR. BELL: For clarification, Your Honor, you’re imposing bail to be – a bond to be cosigned a financially responsible person or a person who can provide moral suasion?

THE COURT: Yes.

MR. BELL: Is that person to be someone other than Mr. Prokopi’s wife?

THE COURT: Well, this is one – I intended one additional cosigner.

MR. BELL: Okay --

THE COURT: In addition to his wife. All right, does that answer your question, Mr. Bell?

MR. BELL: It does, thank you, Your Honor.

THE COURT: Mr. Lederman, did you want to --

MR. LEDERMAN: Yes, Your Honor, Pre-Trial Services asked me to ask the Court whether or not it’s going to impose routine supervision in Florida as well, and also --

THE COURT: I thought that’s already in place.

MR. LEDERMAN: Yes, it is, if you’re going to change that or not, and I would ask that it remain the same.

THE COURT: No, I wasn't going to change that.

MR. LEDERMAN: And also I'm assuming there are travel restrictions that this Court will impose?

THE COURT: Well, the travel restrictions – I'm sorry, I thought --

MR. BELL: I think there had been travel restrictions before, covering the Southern District of Florida --

MR. LEDERMAN: Northern District.

MR. BELL: I'm sorry, the Northern District of Florida, the Southern District of New York and I guess points in between for purposes of travel?

MR. LEDERMAN: Yes --

THE COURT: Northern District of Florida, Southern District of New York, Eastern District of New York, and intervening districts for travel.

MR. LEDERMAN: Yes.

THE COURT: All right. Anything else – and the cosigners are to sign within a week, the additional cosigners to sign within a week. Anything else from the Government?

MR. BELL: No, Your Honor.

THE COURT: Mr. Lederman, anything else?

MR. LEDERMAN: No, Your Honor.

THE COURT: All right, Mr. Prokopi – what'd you want to say?

MR. BELL: I guess there is the matter of a preliminary hearing date.

THE COURT: We're going to get to that in one second. Mr. Prokopi, bail terms have been set. Basically, the bail terms that have been set in Florida will continue with a few amendments. The amount of the bail, the amount of the bond is being upped to $250,000, and you need to find an additional cosigner who's either financially responsible or in a position to exercise moral suasion. I'm vacating the condition of home detention. And your wife's passport also needs to be surrendered to the Pre-Trial Services Agency.

I want to advise you that if you fail to appear in court whenever you're required to or if you violate any other condition of your release, a warrant will issue for your arrest, you and your cosigners will be liable for the full amount of the bond, and you could be charged with the offense of bail jumping. You could be separately prosecuted and separately sentenced for bail jumping even if the conspiracy and the other charges currently pending against you are dismissed. Do you understand that?

MR. PROKOPI: Yes.

THE COURT: Preliminary hearing date, 20 or 30?

MR. LEDERMAN: Thirty, Your Honor, it'll be waived.

THE COURT: Mr. Bell, is that going to go from today or from the date of the arrest in Florida?

MR. BELL: I always get hung up on that one, Your Honor. I --

THE COURT: I'm sorry?

MR. BELL: I think that it's from today.

THE COURT: Any objection to it being from today?

MR. LEDERMAN: No, Your Honor.

THE COURT: All right, so that'll go till November 21. All right, anything else from the Government?

MR. BELL: No, Your Honor, thank you.

MR. LEDERMAN: No, Your Honor, thank you.

THE COURT: Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America v. Prokopi, Docket #12m2634, was prepared using digital electronic transcription software and is a true and accurate record of the proceedings.

Carole Ludwig

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Date: October 25, 2012